

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 ZACHARY L. TRUMBLE,

5 Plaintiff,

6 v.

7 LAS VEGAS METROPOLITAN POLICE
8 DEPARTMENT and OFFICER CO TORRES,
#8232,

9 Defendants.
10

Case No. 2:16-cv-01619-APG-VCF

**ORDER GRANTING MOTION TO
AMEND AND DENYING MOTION TO
DISMISS AS MOOT**

(ECF Nos. 10, 15)

11 Plaintiff Zachary Trumble was a pretrial detainee at Clark County Detention Center
12 (CCDC). He alleges he was assaulted by defendant correctional officers Torres and Fraser, who
13 are employees of defendant Las Vegas Metropolitan Police Department (LVMPD) assigned to
14 work at the CCDC. He originally brought claims against Torres and LVMPD for (1) use of
15 excessive force in violation of the Fourth and Fourteenth Amendments of the United States
16 Constitution under 42 U.S.C. § 1983, (2) cruel and unusual punishment under the Eighth
17 Amendment of the United States Constitution, (3) cruel and unusual punishment in violation of
18 the Nevada Constitution, (4) assault, and (5) battery.

19 LVMPD and Torres move to dismiss the first two claims as redundant because the
20 original complaint did not clarify whether Trumble is an inmate or a pretrial detainee. LVMPD
21 also moves to dismiss the constitutional claims against it because it cannot be liable under § 1983
22 based on respondeat superior and the original complaint contained no allegations of a policy,
23 custom, or practice that would render LVMPD liable.

24 In response, Trumble moves to amend his complaint to clarify that he is a pretrial
25 detainee, to drop his Eighth Amendment claim as a result, to add defendant Fraser, and to add
26 allegations that the use of excessive force was the result of LVMPD's custom and practice of
27 using, and not punishing the use of, excessive force against pretrial detainees.
28

1 I grant the motion to amend because, under Federal Rule of Civil Procedure 15(a)(1),
2 Trumble “may amend once as a matter of course” within 21 days after service of a responsive
3 pleading or motion. I deny the motion to dismiss, which is aimed at the original complaint, as
4 moot.

5 IT IS THEREFORE ORDERED that plaintiff Zachary Trumble’s motion to amend (**ECF**
6 **No. 15**) is **GRANTED**. Pursuant to Local Rule 15-1(b), the plaintiff shall file and serve the
7 amended complaint.

8 IT IS FURTHER ORDERED that the defendants’ motion to dismiss (**ECF No. 10**) is
9 **DENIED as moot**.

10 DATED this 21st day of April, 2017.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE